



**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

UNITED STATES OF AMERICA

§

VS.

§

CASE NO. 1:12-CR-00119-012

MACK LANGSTON WARNER

§

**FINDINGS OF FACT AND RECOMMENDATION ON PLEA OF TRUE
BEFORE THE UNITED STATES MAGISTRATE JUDGE**

Pursuant to 28 U.S.C. § 636(b), and the Local Rules for the District Court, Eastern District of Texas, the District Court referred this matter for hearing and the submission of findings of fact and a report and recommendation pursuant to 18 U.S.C. §§ 3401(i) and 3583(e). The United States alleges that the defendant, Mack Langston Warner, violated conditions of supervised release imposed by United States District Judge Marcia A. Crone. The United States Probation Office filed its *Petition for Warrant or Summons for Offender Under Supervision* (doc. #609) requesting the revocation of the defendant's supervised release. The Court conducted a hearing on December 19, 2017, in accordance with Federal Rules of Criminal Procedure 11, 32 and 32.1. The defendant was present and represented by counsel at the hearing. Having heard the evidence, this court factually finds that the defendant has violated conditions of supervision and recommends that such violation

warrants the revocation of his supervised release.

After conducting the proceeding in the form and manner prescribed by Federal Rule of Criminal Procedure 11, the Court finds:

- a. That the defendant, after consultation with counsel of record, has knowingly, freely, and voluntarily consented to the administration of the plea of true in this cause by a United States Magistrate Judge subject to a final approval and imposition of sentence by the District Court.
- b. That the defendant is fully competent and capable of entering an informed plea, that the defendant is aware of the nature of the charges and the consequences of the plea, that his plea of true is a knowing and voluntary plea, not the result of force or threats, and that the plea is supported by an independent evidentiary basis in fact establishing each of the essential elements of the conduct.

STATEMENT OF REASONS

A. Procedural History

On April 10, 2014, The Honorable Marcia A. Crone, U.S. District Judge for the Eastern District of Texas, sentenced Mr. Warner after he pled guilty to conspiracy to possess with intent to distribute 50 grams or more but less than 500 grams of methamphetamine, a Class B felony. Judge Crone sentenced the defendant to 60 months imprisonment followed by 4 years of supervised release subject to the standard conditions of release, plus special conditions to include financial disclosure, drug aftercare, and a \$100 special assessment. On September 6, 2017, Mack Langston Warner completed his period of imprisonment and began service of the supervision term.

On October 30, 2017, the Court modified Mr. Warner's conditions to include that the defendant shall reside in a residential reentry center or similar facility, in a community corrections

component for a period of 180 days to commence immediately. *See Order* (doc. #608).

B. Allegations in Petition

The United States Probation Office alleges that the defendant violated the following standard condition of release:

You shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.

Specifically, on October 19, 2017, Mack Warner submitted a urine specimen which tested positive for methamphetamine, and on October 25, 2017, Mr. Warner submitted a urine specimen which tested positive for marijuana.

C. Evidence presented at Hearing:

At the hearing, the Government proffered evidence in support of the allegation in the petition to revoke. Specifically, the Government admitted Exhibit 1, Drug Test Report, establishing that on October 19, 2017, Mr. Warner submitted a urine specimen which tested positive for methamphetamine. The Government also introduced the testimony of Mr. Warner's probation officer, Robert L. White, who would state that on October 25, 2017, Mr. Warner submitted a urine specimen which tested positive for marijuana

Defendant, Mack Langston Warner, offered a plea of true to the allegations. Specifically, he agreed with the evidence summarized above and pled true to the allegation that he submitted a urine specimen which tested positive for methamphetamine, and that he submitted a urine specimen which tested positive for marijuana.

D. Sentencing Guidelines; Findings and Recommended Disposition

The allegations, supporting evidence, and plea of true warrant revocation of supervised release. *See* 18 U.S.C. § 3583(e)(3). The Court factually finds by a preponderance of the evidence that the defendant violated a standard condition of his supervised release by using a control substance. This conduct constitutes a Grade C violation under U.S.S.G. § 7B1.3(a)(2). Upon finding a Grade C violation, the Court may revoke the defendant's supervised release. *See* U.S.S.G. § 7B1.3(a)(2).

Based upon the Defendant's criminal history category of VI and the Grade C violation, the sentencing guidelines suggest a sentence of imprisonment for a period ranging from 8 to 14 months. *See* U.S.S.G. § 7B1.4(a). Because the original offense of conviction was a Class B felony, the statutory maximum imprisonment term upon revocation is three (3) years. *See* 18 U.S.C. § 3583(e)(3).

If the Court revokes a defendant's term of supervision and orders the defendant to serve a term of imprisonment for that revocation, the Court may also require that the defendant be placed on a new term of supervised release. *See* 18 U.S.C. § 3583(h). The length of this term of supervised release shall not exceed the term of supervised release authorized by statute for the offense which resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release. *Id.* In this case, the authorized term of supervised release by statute is not more than five years. *See* 18 U.S.C. § 3583(b)(2)&(h).

According to U.S.S.G. § 7B1.3(d), any restitution, fine, community confinement, home detention, or intermittent confinement previously imposed in connection with a sentence for which revocation is ordered that remains unpaid or unserved at the time of revocation shall be ordered to

be paid or served in addition to the sanction determined under U.S.S.G. § 7B1.4, and any such unserved period of community confinement, home detention, or intermittent confinement may be converted to an equivalent period of imprisonment. In this case, according to the information submitted by the Probation Office, on November 8, 2017, Mr. Warner arrived at the County Rehabilitation Center in Tyler, Texas, for his initial placement intake. Mr. Warner refused to enter the facility and drove away from the facility without permission.

The Fifth Circuit states that Chapter 7 of the Sentencing Guidelines regarding the revocation of supervised release is advisory only. *See United States v. Cade*, 279 F.3d 265, 271 n.2 (5th Cir. 2002) (citing *United States v. Montez*, 952 F.2d 854, 859 (5th Cir. 1992); *United States v. Headrick*, 963 F.2d 777, 782 (5th Cir. 1992)). Because Chapter 7 was promulgated as an advisory policy statement and there are no applicable guidelines for sentencing after revocation of supervised release¹, the Court may impose a greater or lesser sentence upon revocation. *United States v. Gonzalez*, 250 F.3d 923, 925 (5th Cir. 2001). Further, a sentence imposed for revocation will be upheld unless it is in violation of the law or plainly unreasonable. *Id. See also United States v. Pena*, 125 F.3d 285, 288 (5th Cir. 1997) (citations omitted).

Here, the evidence and the defendant's own admission supports a finding that the defendant committed a Grade C violation of his supervision conditions. Mr. Warner pled true, agreed with the Court's recommended sentence for that violation, and waived his right to allocute before the District Court.

Accordingly, based upon the defendant's plea of true, the agreement of the parties, and the evidence presented in this case, it is the recommendation of the undersigned United States

¹ *See U.S. Sentencing Guidelines Manual*, Ch. 7, pt. A, cmt. 1 ("At this time, the Commission has chosen to promulgate policy statements only.")

Magistrate Judge that the District Court accept the plea of true and revoke Defendant's supervised release. The undersigned magistrate judge recommends that the District Court order Defendant to serve a term of **fourteen (14) months** imprisonment, which **includes his 180 days** of unserved community confinement time.

The Court further recommends that, upon release from prison, the defendant serve a new term of **supervised release of two (2) years**. The new term of supervision should be subject to the same standard conditions adopted by the Court and imposed in the original judgment of conviction. Further, the Court finds the special conditions originally imposed are still relevant and are reimposed as follows:

“You must provide the probation officer with access to any requested financial information for purposes of monitoring his efforts to obtain and maintain lawful employment and income.

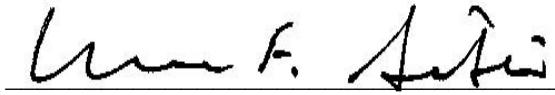
You must participate in a program of testing and treatment for alcohol abuse, and follow the rules and regulations of that program until discharged. The probation officer, in consultation with the treatment provider, will supervise your participation in the program. You must pay any cost associated with treatment and testing.”

OBJECTIONS

Objections must be: (1) specific, (2) in writing, and (3) served and filed within fourteen (14) days after being served with a copy of this report. *See 28 U.S.C. § 636(b)(1).* A party's failure to object bars that party from: (1) entitlement to *de novo* review by a district judge of proposed findings and recommendations, and (2) appellate review, except on grounds of plain error of unobjected-to factual findings and legal conclusions accepted by the district court. *See Douglass v. United Servs. Auto. Ass'n.*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc).

The constitutional safeguards afforded by Congress and the courts require that, when a party takes advantage of his right to object to a magistrate's findings or recommendation, a district judge must exercise its nondelegable authority by considering the actual evidence and not merely by reviewing and blindly adopting the magistrate judge's report and recommendation. *See Hernandez v. Estelle*, 711 F.2d 619, 620 (5th Cir. 1983); *United States v. Elsoffer*, 644 F.2d 357, 359 (5th Cir. 1981) (per curiam).

SIGNED this the 21st day of December, 2017.



KEITH F. GIBLIN
UNITED STATES MAGISTRATE JUDGE